

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARK ANTHONY ORTEGA	§	
Plaintiff,	§	
v.	§	
	§	Case No. 5:25-CV-00865-JKP-HJB
TRISMART SOLAR, LLC, and JOSE	§	
MANUEL TURRUBIATES	§	
Defendants.	§	

PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT

Plaintiff, Mark Anthony Ortega ("Plaintiff"), requests that the Clerk of Court enter default against Defendant Jose Manuel Turrubiates ("Turrubiates"), pursuant to Federal Rule of Civil Procedure 55(a). In support of this request, Plaintiff states the following:

SUMMARY

1. The proof of service (ECF No. 23) demonstrates that Turrubiates was properly served with a copy of Plaintiff's Original Complaint (ECF No. 1) in this case on December 6, 2025.
2. More than twenty-one (21) days have elapsed since the date of service of process, and Turrubiates has failed to answer, challenge, or otherwise defend as required by Federal Rule of Civil Procedure 12(a)(1)(A) and as demonstrated by the record in this action and by the Declaration of Mark Anthony Ortega filed concurrently with his motion.

BACKGROUND

3. On July 18, 2025, Plaintiff filed his Original Complaint (ECF No. 1) against TriSmart Solar, LLC and Jose Manuel Turrubiates in this suit seeking monetary relief for violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 et seq., and the Texas Business and Commercial Code, Chapter 302 & 305.

4. Plaintiff properly served Turrubiates with the Complaint and Summons on December 10, 2025 (ECF No. 23).

5. Turrubiates has not appeared in this action.

ARGUMENTS AND AUTHORITIES

6. The Clerk of Court must enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *see N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996).

7. The Clerk should enter a default against Turrubiates because he did not file a responsive pleading within 21 days of service. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 6(d); *see* Fed. R. Civ. P. 55(a).

8. The Clerk should enter a default against Turrubiates because he did not otherwise defend the suit. Fed. R. Civ. P. 55(a).

9. Because Turrubiates did not file a responsive pleading or otherwise defend the suit, he is not entitled to notice of entry of default. *See* Fed. R. Civ. P. 5(a)(2); *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141-42 (5th Cir. 1996).

10. Plaintiff is therefore, entitled to entry of default against Turrubiates because he has failed to file an answer to the Original Complaint or any other responsive pleadings. This entry of default is authorized by Rule 55 of the Federal Rules of Civil Procedure.

PRAYER

For the foregoing reasons, Plaintiffs respectfully request the Clerk of Court to enter a default against Defendant Turrubiates in this matter.

Dated: January 9, 2026

Respectfully submitted,

/s/ Mark Anthony Ortega
Mark Anthony Ortega
Plaintiff, Pro Se
mortega@utexas.edu
PO Box 702099
San Antonio, TX 78270
Telephone: (210) 744-9663

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2026, I served a true and correct copy of this document on the parties and/or attorneys of record via first class mail to Defendant Jose Manuel Turrubiates at the following address:

Jose Manuel Turrubiates
533 E Carson St
San Antonio, TX, 78208

/s/ Mark Anthony Ortega
Mark Anthony Ortega

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DECLARATION IN SUPPORT OF CLERK’S ENTRY OF DEFAULT

I hereby certify that I, Mark Anthony Ortega, am the Plaintiff in the above cause, and that Defendant Jose Manuel Turrubiates (“Turrubiates”) was served on December 10, 2025 as evidenced by the Proof of Service. (ECF No. 23)

I further certify that the defendant has failed to serve an answer or other responsive pleading; the defendant is neither an infant (under age 21) nor an incompetent person; the defendant is not in the active military service of the United States of America or its officers or agents or was not six months prior to the filing of the case. Therefore, the Clerk is requested to enter a default against said defendant.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: January 9, 2026

Respectfully Submitted,

/s/ Mark Anthony Ortega
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Plaintiff, Pro Se
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